

GAHC010081722023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/140/2023

SALIM UDDIN LASKAR
S/O ANSAR UDDIN LASKAR,
VILLAGE- KUCHILA GRANT, P.O- KUCHILA BAZAR P.S. AND DISTRICT
-HAILAKANDI, ASSAM PIN- 788155.

VERSUS

THE STATE OF ASSAM AND 15 ORS.
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT
DEPARTMENT, DISPUR, GUWAHATI.

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
PANJABARI ROAD
JURIPAR
GUWAHATI-37

3:THE DEPUTY COMMISSIONER
HAILAKANDI
P.O AND DISTRICT- HAILAKANDI
ASSAM

PIN- 788151

4:THE CHIEF EXECUTIVE OFFICER
HAILAKANDI ZILLA HAILAKANDI
ASSAM
PIN- 788151

5:THE SECRETARY AND EXECUTIVE OFFICER LALA ANCHALIK

PANCHAYAT
MONACHERRA
P.O- MONACHERRA
DISTRICT- HAILAKANDI
ASSAM
PIN-788164

6:THE PRESIDENT
LALA ANCHALIK PANCHAYAT
VILLAGE AND P.O-MONACHERRA
DISTRICT- HAILAKANDI
ASSAM

PIN-788164

7:THE SECRETARY
BORBOND GAON PANCHAYAT
P.O-KUCHILA GRANT
P.O- KUCHILA BAZAR DISTRICT- HAILAKANDI
ASSAM.
PIN- 788155

8:JAHANARA BEGUM MAZARBHUIYA
GROUP MEMBER NO.1 OF BORBOND GAON PANCHAYAT

W/O LATE SIRAJ UDDIN MAZARBHUIYA
R/O VILLAGE- BORBOND PART-I
P.O-BORBOND PART-I
DISTRICT- HAILAKANDI
ASSAM

PIN- 788164

9:ALIA BEGUM BARBHUIYA
GROUP MEMBER NO.2 OF BORBOND GAON PANCHAYAT

W/O FARUK AHMED BARBHUIYA
R/O VILLAGE- BORBOND PART-I

P.O- BORBOND PART-I
DISTRICT -HAILAKANDI
ASSAM

PIN- 788164

10:ABUL HUSSAIN BARBHUIYA
GROUP MEMBER NO.3 OF BORBOND GAON PANCHAYAT

S/O LATE LALU MIA BARBHUIYA
R/O VILLAGE- BORBOND PART-I
P.O-BORBOND PART-I
DISTRICT- HAILAKANDI
ASSAM

PIN- 788164

11:GAURANGA DAS PURKAYASTHA
GROUP MEMBER NO.4 OF BORBOND GAON PANCHAYAT

S/O LATE GOHINDRA DAS PURKAYASTHA
R/O VILLAGE- BORBOND PART-I
P.O-BORBOND PART-I
DISTRICT- HAILAKANDI
ASSAM

PIN- 788164

12:DEBOBRATA ROY
GROUP MEMBER NO.5 OF BORBOND GAON PANCHAYAT

S/O LATE SUKH LAL ROY
R/O VILLAGE-KUCHILA GRANT

P.O-KUCHILA BAZAR

DISTRICT-HAILAKANDI
ASSAM

PIN- 788155

13:SAFIA BEGUM BARBHUIYA
GROUP MEMBER NO.7 OF BORBOND GAON PANCHAYAT

W/O SAMS UDDIN BARBHUIYA
R/O VILLAGE- KUCHILA GRANT
P.O- KUCHILA BAZAR
DISTRICT- HAILAKANDI
ASSAM
PIN- 788155

14:RUKIA BEGUM MAZUMDER
GROUP MEMBER NO.8 OF BORBOND GAON PANCHAYAT

W/O JALAL UDDIN MAZUMDER
R/O VILLAGE-CHANDRAPUR

P.O- KUCHILA BAZAR

DISTRICT- HAILAKANDI

ASSAM

PIN-788155

15:SALIM UDDIN LASKAR

GROUP MEMBER NO.9 OF BORBOND GAON PANCHAYAT

S/O SUNDER RAJA LASKAR

R/O VILLAGE-CHANDRAPUR

P.O- KUCHILA BAZAR

DISTRICT-HAILAKANDI

ASSAM

PIN- 788155

16:KAMAL UDDIN LASKAR

GROUP MEMBER NO.10 OF BORBOND GAON PANCHAYAT

S/O SABIR AHMED LASKAR

R/O VILLAGE- DUDPUR

P.O- BALIURRA

DISTRICT-HAILAKANDI

ASSAM

PIN 78815

For appellant(s) : Mr. M. H. Laskar, Advocate
Mr. H. I. Choudhury, Advocate

For respondent(s) : Mr. K. Konwar, Advocate (for R. 1, 2, 4, 5, 7)
Mr. S. Konwar, Jr. GA, Assam (for R. 3)
Ms. S. B. Choudhury, Advocate (for R. 8 to 16)

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

03.05.2023

[Sandeep Mehta, CJ]

Heard the learned counsel for the parties.

The instant intra-court writ appeal is directed against the order dated 09.03.2023, passed by the learned Single Judge dismissing WP(C) 7986/2022 preferred by the appellant against the motion of no-confidence 29.11.2022 drawn against the appellant/writ petitioner pursuant to a meeting convened in the office of the Lala Anchalik Panchayat, in the district of Hailakandi, Assam. It may be stated that the earlier resolution of no-confidence dated 27.09.2022 drawn against the appellant/writ petitioner was interfered with by the learned Single Judge vide order dated 04.11.2022, passed in WP(C) 6799/2022, directing that the Secretary cum Executive Officer of the Lala Anchalik Panchayat shall henceforth proceed with the matter in accordance with law and bring the process to its logical end. Pursuant to the said direction, notice to convene a special meeting to discuss the motion of no-confidence was again issued on 16.11.2022 and the meeting was convened on 29.11.2022, on which date a resolution of no-confidence was passed against the appellant/writ petitioner. The said resolution of no-confidence has been sustained by the learned Single Judge, as indicated above, dismissing WP(C) 7986/2022 filed by the appellant/writ petitioner vide order dated 29.11.2022 assailed in this appeal.

Mr. M. H. Laskar and Mr. H. I. Choudhury, learned counsel representing the appellant/writ petitioner have vehemently and fervently contended that the fresh meeting to discuss the motion of no-confidence was not convened in accordance with the mandate of Section 15(1) of the Assam Panchayat Act, 1994 (hereinafter referred to as "Act of 1994" for short) inasmuch as the notice dated 16.11.2022 was issued by the Secretary of the Anchalik Panchayat and, as such, the no-confidence motion suffers from breach of the mandatory requirement of Section 15(1) of the Act of 1994 and is liable to be declared invalid.

Per contra, learned counsel representing the respondents have drawn the Court's attention to the proceedings undertaken in the meeting for discussing the motion convened at the Anchalik Panchayat on 29.11.2022 (Annexure at page 88 of the Memo. of Appeal) pursuant to the notice dated 16.11.2022 issued by the Secretary of the Lala Anchalik Panchayat. The meeting was convened on 29.11.2022 in the office of the Lala

Anchalik Panchayat wherein the President of the Lala Anchalik Panchayat was present. In the meeting, 9 (nine) votes were cast in favour of the no-confidence motion, whereas no vote was cast against the same. He urged that as the President of the Lala Anchalik Panchayat was a part of the process in which the notice to convene the meeting was issued under Section 15 of the Act of 1994, and as the President of the Anchalik Panchayat was also present in the meeting, the requirement of Section 15(1) of the Act of 1994 that the President of the Anchalik Panchayat shall convene the meeting has been duly satisfied. He submitted that the requirement of Section 15 of the Act of 1994 has been duly satisfied and thus, the motion of no-confidence does not suffer from any infirmity. He implored the Court to affirm the order passed by the learned Single Bench dismissing the writ petition preferred by the appellant.

We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material available on record. There is no dispute that the President of the Lala Anchalik Panchayat was present in the meeting dated 29.11.2022 convened to consider the motion of no-confidence against the appellant.

It may be noted that the direction of this court in the order dated 04.11.2022 passed in WP(C) No.6922/2022 was to the Secretary cum Executive Officer of the Lala Anchalik Panchayat for continuing with the no-confidence proceedings. Thus, it was incumbent upon the Secretary, Lala Anchalik Panchayat, to issue the notice for considering the motion of no-confidence and, as a consequence, he was perfectly justified in issuing the notice dated 16.11.2022 to consider the motion of no-confidence and there has been no violation of the mandate of Section 15(1) of the Act in convening the meeting aforesaid.

As per sub-clause (1) of Section 15 of the Act of 1994, where the motion is moved against the President, the meeting will be presided over by the Vice-President of the Panchayat. However, as the Vice-President was not available in the Panchayat, the matter was referred to the Anchalik Panchayat. Thus, the President of the Anchalik Panchayat was required to preside over the meeting as per Section 15 of the Act, which precisely has been done in the case in hand.

This Court has time and again considered the issue regarding technical defect in issuing the notice of no-confidence and the non-service thereof on the incumbent. In the judgment of ***Padmini Singha v. The State of Assam & Ors.***¹, Hon'ble Supreme Court while considering the provisions of the Assam Panchayat Act, held that when the President against whom the no-confidence motion was moved, was himself present in the meeting, deficiency if any in issuance of the notice would not vitiate the proceedings. However, we do not find any deficiency in the manner in which the meeting was convened because as per Section 15(1) of the Assam Panchayat Act, the President of the Anchalik Panchayat is required to convene the meeting within 7(seven) days from the date of receipt of information from the Secretary of the Gaon Panchayat and to preside over such meeting. A Division Bench of this Court in the case of ***Mumtaz Rana Laskar v. State of Assam***² held that the time frame prescribed under Section 15(1) of the Assam Panchayat Act, 1994 was directory in nature. In another Division Bench judgment rendered in the case of ***Habibur Rahman v. State of Assam & Ors.***³, it was held that mere procedural irregularity in the matter of making the reference by the Secretary of the Gaon Panchayat either to the President of the Anchalik Panchayat or to the Deputy Commissioner, as the case may be, shall have no bearing whatsoever upon the resolution passed in the specially convened meeting expressing want of no-confidence against the President or Vice-President of the Panchayat, as the case may be. Apparently thus, this Court has time and again held that the technical flaws in the procedure provided in Section 15(1) of the Assam Panchayat Act would not vitiate the procedures. The same view was reiterated by the Full Bench of this Court in the case of ***Forhana Begum Laskar v. State of Assam & Ors.***⁴ In the present case, President of the Anchalik Panchayat received the information of the order dated 04.11.2022 passed by this court whereafter the meeting was convened vide notice dated 16.11.2022 issued by the Secretary of the Anchalik Panchayat presumably under the directions of the President of the Anchalik Panchayat. The presence of the President of the Anchalik Panchayat in the meeting held to consider the motion of no-confidence purges the technical deficiency if any in the issuance of the proceeding.

1 (2018) 10 SCC 561

2 2006 (1) GLT 46

3 2006 [Supp] GLT 218

4 2009 (6) GLR 429

The motion of no-confidence proposed against the appellant/writ petitioner was carried through with 9 (nine) of the proposers voting against the appellant, 0 (zero) votes were cast against the motion. In this background, it is apparent that the appellant/writ petitioner lost confidence of the Panchayat and had no right to continue on the post of the President.

In wake of the discussion made above, we are of the considered opinion that the view taken by the learned Single Judge while dismissing WP(C) 7986/2022 does not suffer from any infirmity warranting interference. We find no merit in this appeal and the same is dismissed as such.

Sd/- *Mitali Thakuria*
JUDGE

Sd/- *Sandeep Mehta*
CHIEF JUSTICE

Comparing Assistant